

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

ALPHA HOSPITALITY CORPORATION and
ALPHA GULF COAST, INC.

PLAINTIFFS

V.

NO. 4:99CV198-P-B

INVESTORS INSURANCE COMPANY OF
AMERICA, TANENBAUM-HARBER CO.,
INC., and AON RISK SERVICES, INC., U.S
f/k/a AON RISK SERVICES OF PENNSYLVANIA

DEFENDANTS

MEMORANDUM OPINION

Presently before the Court is the plaintiffs' motion to remand this case to the Circuit Court of Washington County, Mississippi [24-1]. The Court, having considered the motion, the response thereto, and the briefs and authorities cited, is prepared to rule. The Court finds as follows, to-wit:

FACTUAL BACKGROUND¹

Plaintiff Alpha Gulf Coast (hereinafter "ACG") is a subsidiary of Plaintiff Alpha Hospitality. ACG is a Delaware corporation with its principal place of business in Mississippi, while Alpha Hospitality is a Delaware corporation with its principal place of business in New York. The plaintiffs have brought this suit against three defendants: Investors Insurance Company of America (hereinafter "Investors"), a New Jersey corporation with its principal place of business in New Jersey; Aon Risk Services, Inc., U.S. (hereinafter "Aon"), a Maryland corporation with its principal place of business in Pennsylvania; and Tanenbaum-Harber Co., Inc., (hereinafter "Tanenbaum-Harber"), a New York corporation with its principal place of business in New York.

¹In considering this motion to remand, the Court will evaluate all of the facts in the light most favorable to the plaintiff. B. Inc., v. Miller Brewing Co., 663 F.2d 545, 549 (5th Cir. 1981).

This Court will not have jurisdiction over the plaintiffs' claims unless there is complete diversity of citizenship between all plaintiffs and all defendants. The Court notes that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. §1332(c)(1). Thus, the plaintiffs contend that this Court does not have jurisdiction over this matter since complete diversity does not exist, because plaintiff Alpha Hospitality and defendant Tanenbaum-Harber are both New York citizens. The defendants respond that Alpha Hospitality is not a real and substantial party to this litigation, in that Alpha Hospitality is the parent of ACG and it does not have claims separate and apart from those of its subsidiary.

This Court is not convinced by the defendants' argument. First, the Court notes that Alpha Hospitality is allowed to bring this lawsuit on behalf of its subsidiary, ACG. Alpha Hospitality engaged Tanenbaum-Harber for insurance consultation and services with regard to the Bayou Caddy's Jubilee Casino, which was organized and operated through ACG. The Federal Rules of Civil Procedure allow a contracting promisee to bring an action on behalf of a beneficiary:

A party with whom or in whose name a contract has been made for the benefit of another . . . may sue in that person's own name without joining the party for whose benefit the action is brought.

Rule 17(a), Fed. R. Civ. P. Alpha Hospitality entered into an agreement with Tanenbaum-Harber on for ACG's benefit. Thus, Alpha Hospitality can bring this lawsuit on behalf of ACG against Tanenbaum-Harber.

Moreover, in addition to simply being allowed to sue on ACG's behalf, this Court is of the opinion that Alpha Hospitality itself has a cause of action against Tanenbaum-Harber. Alpha Hospitality hired Tanenbaum-Harber to provide insurance analysis services. Alpha Hospitality made all of the final decisions with regard to cost and coverage concerning ACG. Tanenbaum-Harber even invoiced Alpha Hospitality for the renewal premium. Clearly, Alpha Hospitality is a real and substantial party to this action based on the fact that Alpha Hospitality was a party in a contractual relationship with Tanenbaum-Harber, and that contractual relationship is relevant to this lawsuit.

This Court is of the opinion that it is without jurisdiction to hear the above entitled case, because Alpha Hospitality is a real and substantial party to the lawsuit and complete diversity does not exist. Therefore, the case should be remanded to the Circuit Court of Washington County, Mississippi.

An order will issue accordingly.

THIS, the _____ day of March, 2001.

W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

